Supreme Court, U.S.
FILED
JAN 11 1985
ALEXANDER L. STEVAS
CLERK

84-1214

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

No. ____

RANSOM CHARLES . . . . . APPELLANT

versus

COMMONWEALTH OF KENTUCKY . . APPELLEE

APPEAL FROM THE COURT OF
APPEALS OF KENTUCKY

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED FOR REVIEW

The effect of a bifurcated recidivist proceeding coupled with jury sentencing under the law of Kentucky and certain other states results in an affirmative misrepresentation to the jury of the consequences of a guilty verdict. Does this misrepresentation and prejudice to the defendant render the statute unconstitutional as violative of the 6th amendment right to an impartial jury and the 14th amendment right to due process?

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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

RANSOM CHARLES, APPELLANT

vs.

COMMONWEALTH OF KENTUCKY, APPELLEE

APPEAL TO REVIEW THE JUDGMENT
OF THE COURT OF APPEALS OF KENTUCKY

* * * * * *

Appellant, Ransom Charles, Respectfully moves this Court to review the opinion of the Kentucky Court of Appeals which was entered on September 9, 1983.

OPINIONS BELOW

The opinion of the Kentucky Court of Appeals affirming Appellant's conviction was rendered on September 9, 1983. The opinion is not to be published. The Kentucky Supreme Court refused to grant discretionary review on October 17, 1984. No mandate has been

issued since mandates are no longer utilized to effectuate final decisions of Kentucky Appellate Courts. CR 76.30(2)(f).

JURISDICTIONAL GROUNDS

The opinion of the Kentucky Court of Appeals was rendered on September 9, 1983. The Kentucky Supreme Court denied discretionary review on October 17, 1984. The jurisdiction of this Court is invoked pursuant to 28 U.S.C.A. §1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. VI:

> [Rights of the accused.]-In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining

witnesses in his favor, and to have the assistance of counsel for his defense.

U.S. Const. amend. XIV §1:

[Citizenship-Due process of law-Equal protection.]-All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ky. Rev. Stat. 532.080 "Persistent felony offender sentencing" Appendix F.

STATEMENT OF THE CASE

On November 22, 1983, Ransom Charles was indicted on charges of Bribery, in violation of KRS 521.020 and Persistent Felony Offender, Second Degree, in violation of KRS 532.080.

The alleged bribery involved an incident on October 11, 1982, when the Appellant offered Two Hundred Dollars ($200.00) to a Fayette County Deputy Sheriff, not to serve a subpoena duces tecum for an appearance at a deposition involving a civil action.

Appellant was arraigned in Fayette Circuit Court November 4, 1982, entered a plea of not guilty, and was tried before a jury on December 20, 1982.

Pursuant to KRS 532.080, the trial was bifurcated. At the close of the first phase, the jury was given

instructions in both written and oral form regarding the principal offense of bribery. The jury was also instructed to fix the punishment for the offense at confinement in the penitentiary for not less than one nor more than five years. After deliberating approximately five hours the jury returned a verdict of guilty and fixed the punishment at eighteen months.

In the second phase, the jury was presented evidence of appellant's prior felony conviction and was instructed on the sentence enhancement provisions of KRS 532.080. The jury was instructed to fix the punishment at five to ten years imprisonment upon a finding of guilt.

During the deliberations in this stage of the trial, the jury requested that the court advise them of the

authorized legitimacy of a verdict of guilty fixing punishment at four years and a verdict of guilty with a suspended sentence. The court properly advised the jury that they had to fix punishment at from five to ten years. The court further advised the jury that they could make a unofficial recommendation for a suspended sentence.

The jury resumed deliberation and found the appellant guilty of persistent felony offender status and fixed punishment at 69 months. The court asked the foreman whether the jury desired to recommend a suspended sentence and the foreman replied that the jury was not unanimous on that issue.

Motions for Directed Verdict were made at the close of the Commonwealth's case and after Appellant had presented

his case. On December 27, 1982, a Motion for Judgment Notwithstanding the Verdict and a Motion for a New Trial were made.

On March 2, 1983, a Final Judgment was entered and on March 10. 1983, Notice of Appeal to the Kentucky Court of Appeals was filed.

On September 9, 1983, the court of appeals entered an Order affirming the trial court Judgment. On January 20, 1984, the court of appeals overruled a Petition for Rehearing.

Counsel for appellant challenged the constitutionality of KRS 532.080 during the second stage of the proceeding. The trial court overruled counsel's objection. The challenge was again raised in the Kentucky Court of Appeals. The court of appeals found

that the argument had not been preserved; however, the court went on to uphold the statute against this challenge. The court's decision upholding the statute dispenses with the need for an examination into how or when the question was raised. Charleston Fed. Sav. & Loan Ass'n v. Alderson, 324 U.S. 182, 185-86 (1944); see also Hess v. Indiana, 414 U.S. 105, 106 N.2 (1973). The question is, therefore, properly before this Court.

REASONS FOR GRANTING PLENARY REVIEW

This case presents a unique question of important constitutional dimensions which has never been addressed by this Court. The issue arises from the recent trend toward bifurcated proceedings in trials where enhanced penalties are sought under recidivist statutes. Bifurcation is generally believed to alleviate an apparent unfairness.[1] When coupled with jury

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[1]Bifurcation of recidivist proceedings is not constitutionally required. Spencer v. Texas, 385 U.S. 554 (1967). A two stage trial is, however, often adopted to alleviate the apparent unfairness of the introduction of prior felonies prior to the jury's determination of guilt on the principal offense. See e.g., Brown v. Commonwealth, 551 S.W.2d 557 (Ky. 1977). But see Spencer, 385 U.S. at 565 n.8 (suggesting that the prejudice from non-bifurcated recidivist proceedings may be overstated).

sentencing, though, it results in an unfairness to the defendant of constitutional proportions.

ARGUMENT

THE KENTUCKY PERSISTENT FELONY OFFENDER STATUTE VIOLATES THE 6TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION BY MANDATING AN AFFIRMATIVE MISREPRESENTATION TO THE JURY REGARDING THE CONSEQUENCES OF A GUILTY VERDICT.

By enacting the present persistent felony offender statute codified in Kentucky Revised Statute §532.080 (hereinafter cited as KRS), the Kentucky legislature adopted a bifurcated proceeding in which the defendant is first found guilty, or not guilty, and sentenced on the principal offense and, if found guilty he or she next tried and sentenced as a persistent felony offender. The legislature's purpose was obviously to reduce the inherent unfair-

ness in allowing the introduction of prior convictions during the trial on the principal offense. Hubbard v. Commonwealth, 633 S.W.2d 67, 68 (Ky. 1982). However admirable, the aim of the legislature may have been, the system it devised creates further problems which significantly impair defendant's right to due process.

The impairment of the defendant's due process rights results from the procedure employed by KRS 532.080 and from the fact that Kentucky is one of a few states that provide jury sentencing. Ky. R. Crim. P. 9.84. Neither of these procedures, taken alone, create any constitutional problems. The combination of the two, however, causes the jury to be affirmatively misinformed as to the consequences of a guilty verdict.

This violates due process and the right to an impartial jury.

A.

The statute mandates an affirmative misrepresentation to the jury.

In the first stage of the bifurcated proceeding, the jury is instructed only on the sentence for the principal offense, a significantly milder sentence than that actually sought by the prosecution. They are not informed that their verdict may have an impact beyond that provided in the instruction. Prejudice to the defendant arises from the erroneous sentencing information given in the first phase of the proceedings.

The question is narrow. Jury sentencing is not, standing alone, unconstitutional. Chaffin v. Stynchcombe, 412 U.S. 17, 22 (1973).

Providing a bifurcated trial for persistent felony offenders is likewise neither unconstitutional nor constitutionally required. Spencer v. Texas, 385 U.S. 554 (1967). The appellant calls neither of the procedures into question when considered alone. The combination of the procedures, however, results in an affirmative misrepresentation to the jury which cannot be tolerated.

Penalties under state recidivist statutes such as KRS 532.080 must be considered a stiffened penalty for the latest crime rather than an additional penalty for prior crimes. Gryger v. Burke, 334 U.S. 728, 732 (1948). This view is necessary to avoid running afoul of the prohibition against double jeopardy. Id. Cast in such a light the

misrepresentation to the jury is obvious. The jury is told prior to their determination of guilt that the offense carries a significantly milder penalty that it in fact carries.

B.

The misrepresentation is highly prejudicial to the defendant.

The extreme prejudice to the defendant is obvious. It is unrealistic to believe that the jury does not make a determination of guilt with an eye toward the potential sentence. Individual jurors obviously allow the severity of the sentence to enter into the verdict. This is not prejudicial, however, if correct information regarding the range of potential penalties is presented. Informing the jury that the range of penalties is from one to five years when in fact the sentence is from

five to ten years, however, can do nothing but so cloud the deliberation process that defendant cannot be said to have had a fair trial.

The facts of this case indicate that at least one member of the jury believed that he or she had been misled by the first sentencing instruction. During the jury's deliberation in the enhancement stage of the proceeding the jury requested the court to advise them as to the authorized legitimacy of a verdict of guilty fixing punishment at four years and a verdict of guilty with a suspended sentence. The court properly advised the jury that they had to set the sentence from five to ten years and that they could only make an unofficial recommendation for the suspension of the sentence. After the jury returned the

guilty verdict and set the punishment at 69 months, the court asked the foreman whether the jury wished to make a recommendation to which the foreman replied that the jury was not unanimous as to the recommendation.

This exchange indicates that at least one of the jurors was disturbed by the additional penalty but believed that they could not, consistent with the instructions, find the defendant not guilty of being a persistent felony offender.

The presentation of erroneous information regarding the severity of the sentence to be imposed is of the type of information which is so highly prejudicial that the defendant cannot receive a fair trial once the information is admitted. An affirmative

misrepresentation to the jury that the severity of penalty resulting from their finding of guilt may significantly distort the process of deliberation resulting in a verdict of guilty when the same jury with correct information or no information would not convict. In Rogers v. United States, 422 U.S. 35 (1975), the Court recognized prejudice cause by incorrect sentencing information being given to the jury. In Rogers, the Court held that the trial court's communication to the jury in the absence of the defendant or the defendant's counsel in violation of Fed. R. Crim. P. 43 was not harmless error. 422 U.S. at 40. The jury had inquired into the acceptability of a recommendation of "guilty with extreme mercy of the court" and the court simply answered in the

affirmative without reminding them that such recommendation was not binding on the court. Id. In failing to so instruct the jury, the trial court effectively misinformed the jury as to the potential impact of their verdict. The absence of the defense counsel was harmful to the defendant since the lack of an admonition to the jury resulted in a possibility of a compromise verdict. Id. at 422. Clearly the possibility of such a compromise verdict creates extreme prejudice to the defendant.[2]

Kentucky's persistent felony offender statute presents a possibility

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[2] See also United States v. Patrick, 494 F.2d 1150 (D.C. Cir. 1974); United States v. Glick, 463 F.2d 491 (2d Cir. 1972); Lovely v. United States, 169 F.2d 386, 391 (4th Cir. 1948).

for error in the verdict even greater than that presented in Rogers. KRS 532.080 not only effectively misleads the jury, it affirmatively misrepresents the impact of a guilty verdict. If Rogers presents a harmful error, clearly the impact of the error caused by KRS 532.080 is devastating.

C.

The statute violates defendant's rights under the 6th and 14th amendments.

The necessary result of the bifurcated trial proceeding in KRS 532.080 is a denial of the Defendant's right to a fair trial under the due process clause of the fourteenth amendment. The potential for error is so great in all cases arising under this statute that it must be declared unconstitutional. In making his argument, the Defendant does not wish to imply that a jury must

necessarily be informed of all the consequences of a verdict of guilty. Nowhere does the Constitution require that juries be informed of all the consequences of their verdicts. Defendant does contend, however, that juries may not intentionally be given erroneous information which may cloud the process of deliberation.

Due process certainly requires that the trial be fair in every respect. The question has arisen in the context of extraneous information entering the jury's determination of guilt. In Irving v. Dowd, 366 U.S. 717, 722 (1961), the Court stated:

> A fair trial and a fair tribunal is a basic requirement of due process. . . In the ultimate analysis, only the jury can strip a man of his liberty or his life. In the language of Lord Coke, a juror must be as 'indifferent as he stands unsworn.' His verdict must be

based on the evidence developed at the trial. . . This is true regardless of the heinousness of the crime charged, the apparent guilt of the offender or the station in life which he occupies. (citations omitted).

Irving involved pretrial publicity which the Court felt may have been entered into the jury's determination of guilt.

Again, the impact provided by KRS 532.080 is much more severe than that provided in cases in which the Court has found a violation of due process. In Irving, the issue was whether pretrial publicity (which may or may not have correctly stated the evidence) so affected the jury's deliberations as to render the entire process unfair and violative to defendant's due process rights. KRS 532.080 requires that the jury be given affirmatively misleading sentencing information. The practice mandated by the statute prevents a fair

trial in every case in which the Commonwealth seeks the enhanced sentence provided by the law. As Mr. Justice Black stated in In Re Murchison, 349 U.S. 133, 136 (1955), "our system of law has always endeavored to prevent even the probability of unfairness." The probability of unfairness in the procedure required by KRS 532.080 is so great that the statute cannot stand.

The affirmative misrepresentation caused by the bifurcated proceeding creates constitutional problems beyond the general unfairness of a prejudicial misstatement to the jury. The 6th amendment as applied to the states through the 14th amendment requires jury impartiality. This impartiality is clearly impaired by the misrepresentation occurring in the first stage of the

proceeding. Upon discovering that the defendant has committed prior felonies the jury may be much more inclined to convict in the persistent felony offender stage of the proceeding. The jury, in all probability, will attribute the misinformation in the first stage of the proceeding to the defendant. The sentence imposed in the second stage of the proceeding may therefore be much more severe than would otherwise be imposed.

Appellant recognizes the state interest in strengthening its attempts at rehabilitation by providing greater penalties for repeat offenders. Williams v. Commonwealth, 639 S.W.2d 788 (Ky. 1982). The state also has a strong interest in providing a bifurcated trial in persistent felony offender

proceedings. Brown v. Commonwealth, 551 S.W.2d 557 (Ky. 1977). Appellant challenges neither of the above interests. Appellant's complaint goes only to the result of the bifurcated proceeding in conjunction with the instruction to the jury of the sentences range for the principal offense. All that is required to correct this error is that, in the first phase of the trial, the jury be instructed to return only a verdict of guilt or innocence. The jury should be instructed to impose sentence only at the conclusion of the second phase.[3]

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[3]This alternative has been adopted in Arkansas. Ark. Stat. Ann. §43-2330.1 (1977); Woods v. State, 545 S.W.2d 912, 913 (Ark. 1977). Clearly, alleviating the constitutional imfirmaty of the procedure would require only a minor alteration of Kentucky law.

This alternative would cure the constitutional problems without infringing on any state interest.

CONCLUSION

The combination of bifurcated recidivist proceedings and jury sentencing creates a clear violation of defendant's right to due process. The question is narrow and easily resolved without the infringement of any state interest. Our system of criminal justice cannot condone a statute which mandates an affirmative misrepresentation to a jury which so harms the defendant. For the reasons above stated, Appellant respectfully requests that the Court grant plenary review of this important question.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Appeal to Review the Judgment of the Court of Appeals of Kentucky was served by mailing same on this the 10th day of January, 1985, to the following:

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Judge, Fayette Circuit Court
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Clerk of the Fayette
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John Y. Brown Sr
John Y. Brown, Sr.

APPENDIX

Opinion Rendered: September 9, 1983:
10:00 a.m.
Not To Be Published

APPENDIX A

COMMONWEALTH OF KENTUCKY

COURT OF APPEALS

FILE NO. 83-CA-864-MR

RANSOM CHARLES APPELLANT

v. APPEAL FROM FAYETTE
CIRCUIT COURT
HONORABLE CHARLES M. TACKETT, JUDGE
INDICTMENT NO. 82-CR-686

COMMONWEALTH OF KENTUCKY APPELLEE

AFFIRMING

* * * * * * * * * * * * * * * * * * *

BEFORE: COOPER, DUNN, AND HOWERTON, Judges.

COOPER, Judge. This is an appeal from a judgment convicting the appellant of bribery of a public servant and with being a persistent felony offender in the second degree. KRS 521.020; KRS 532.080. On appeal, the principal issue

is whether the trial court erred, as a matter of law, in ruling that a deputy sheriff is within his official capacity when he serves a subpoena in a civil action. Reviewing the record below, we affirm.

The facts relative to this action are as follows: In November of 1983, the appellant, Ransom Charles, publisher of the Lexington Independent Yellow Pages, was indicted on one count of bribery of a public official and with being a persistent felony offender in the second degree. The indictments arose out of an incident occurring in October of 1982, when the appellant allegedly offered Jerry Powell, Fayette County Deputy Sheriff, $200.00 not to serve a subpoena duces tecum for an appearance at a deposition in a civil

action. The subpoena was being served on behalf of First Security National Bank & Trust Company.

Thereafter, the appellant entered a plea of not guilty. He was subsequently tried by a jury and found guilty of count I of the indictment, with the jury fixing his sentence at eighteen months' imprisonment. In the persistent felony offender stage of the trial, the appellant was again found guilty, with his initial term of imprisonment being enhanced to 69 months. Although the appellant moved for both judgment notwithstanding the verdict and a new trial, such motions were overruled by the trial court. It is from such judgment that the appellant now appeals.

Principally, the appellant argues that the trial court erred, as a matter

of law, in ruling that a deputy sheriff is acting in his official capacity when serving a subpoena in a civil action. Reviewing the record below, we disagree. KRS 521.020 provides as follows:

> (1) A person is guilty of bribery of a public official when:
>
> > (a) He offers, confers or agrees to confer any pecuniary benefit upon a public servant with the intent to influence the public servant's vote, opinion, judgment, exercise of discretion or any action in his official capacity as a public servant. . .

Here, the appellant argues that at the time the sheriff was serving the subpoena duces tecum, he was not acting within his official capacity in that he was not required by statute to serve such a summons. In effect, he argues that at the time the alleged bribery

occurred, the deputy sheriff was not acting as an agent of the Commonwealth, but as an agent of First Security National Bank & Trust Company. We disagree.

The term "official capacity" has been construed to include not only those functions required by law for the officer to perform, but also those functions permitted by law for an officer to perform. See 67 C.J.S., Officers, § 193(a) (1978). CR 45.03 authorizes any officer - such term would include a deputy sheriff - to serve a summons. Furthermore, KRS 70.070 states that "each sheriff shall execute and make a due return of all notices and process which come to him and may be lawfully executed by him against any person or property in his county. . ."

A subpoena is, in effect, a notice to appear at a time and place in the course of legal proceeding. As such, it falls within the definition of "process" as such term is used in the statute.

In Gowdy v. Sanders, 88. Ky. 346, 11 S.W. 82 (1889), the court ruled that the term "process," as used in §667 of the Civil Code of Practice, included an execution. It quoted subsection (1) of §667:

> [e]very process in an action or proceeding shall be directed to the sheriff of the county; or, if he be a party, or be interested to the coroner; or, if he be interested to the jailer; or, if all these officers be interested to any constable.

Furthermore, Section 732 (26) of the Civil Code of Practice defined "process" as a writ or summons in the course of judicial proceeding. Consequently, at

the time of the Gowdy decision, "process" included a subpoena. Here, the appellant has failed to demonstrate how the definition of "process," as set forth in KRS 70.070, differs in any substantive way from its prior usage in subsection (1) of §667 of the Civil Code of Practice. Consequently, the trial court acted correctly in ruling that a deputy sheriff is acting in his official capacity at the time he serves a subpoena in a civil action.

Secondly, the appellant argues that the prohibition against probation, shock probation, and conditional discharge, set forth in KRS 532.080(5), is unconstitutional under the separation of powers doctrine embodied in §28 of the Kentucky Constitution. Reviewing the record below, we find that such issues

are not fully preserved for appellate review. RCr 9.22; RCr 10.12. Although the appellant attacked the unavailability of probation, shock probation, and conditional discharge, in a motion for a new trial, the basis for such a motion was equal protection under the law. Furthermore, in that motion, he raised the issue of separation of powers only with respect to modifying the sentence pursuant to KRS 532.070. That issue has not been raised in this appeal. Nevertheless, we reiterate the language of the court in White v. Commonwealth, Ky. App., 611 S.W.2d 529 (1980), wherein it stated that:

> Probation and parole are not constitutional rights, but, rather, are legislative clemencies granted as a matter of grace. . .
> Id. at p. 531.

Accordingly, we find no merit in the appellant's argument.

Finally, we reject the argument that the trial court abused its discretion in allowing the Commonwealth, in its cross-examination of the appellant, to explore the appellant's business dealings and practices in that such questions were not relevant or probative. The issues raised on cross-examination were initially raised by appellant's own counsel. Consequently, he cannot argue that the Commonwealth somehow abused its scope of cross-examination.

And, we reject the appellant's remaining argument that KRS 532.080 violates §11 of the Kentucky Constitution and the 6th and 14th Amendments to the United States Constitution. In

effect, he argues that the bifurcated jury proceeding denies equal protection to him under the law in that the jury which found him guilty of the felony charge also determined his guilt or innocence in the persistent felony offender stage of the proceedings. Again, we find that such an argument has not been preserved for appellate review. Furthermore, the charge of being a persistent felony offender is not a charge related to a specific defense, but involves a status. See Smith v. Commonwealth, Ky. App., 610 S.W.2d 939 (1980). It was the function of the jury sitting in the persistent felony offender stage of the proceeding to determine if the appellant had the status of a persistent felony offender and to determine what sentence he should

receive. Consequently, the jury was not prejudiced by knowing that the appellant had committed the offense of bribery of a public servant.

The judgment of the trial court is affirmed.

ALL CONCUR.

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APPENDIX B

COMMONWEALTH OF KENTUCKY

COURT OF APPEALS

FILE NO. 83-CA-864-MR

RANSOM CHARLES APPELLANT

v. APPEAL FROM FAYETTE
CIRCUIT COURT
HONORABLE CHARLES M. TACKETT, JUDGE
Civil Action No. 82-CR-686

COMMONWEALTH OF KENTUCKY APPELLEE

ORDER DENYING PETITION FOR REHEARING

BEFORE: COOPER, HOWERTON and DUNN, Judges

DUNN, JUDGE.

The Court having considered the Petition for Rehearing and being sufficiently advised, it is ORDERED that the same is hereby DENIED.

s/s WILLIAM R. DUNN

JUDGE, COURT OF APPEALS

ENTERED: January 20, 1984

APPENDIX C

SUPREME COURT OF KENTUCKY

84-SC-113-D
(83-CA-864-MR)

RANSOM CHARLES MOVANT

v. FAYETTE CIRCUIT COURT
#82-CR-686

COMMONWEALTH OF KENTUCKY RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

The motion of Ransom Charles, for a review of the decision of the Court of Appeals is denied.

Stephens, C.J., not sitting.

ENTERED October 17, 1984.

S/S J. Calvin Aker

Deputy Chief Justice

APPENDIX D

FAYETTE CIRCUIT COURT
CRIMINAL BRANCH
FIFTH DIVISION

COMMONWEALTH OF KENTUCKY,
PLAINTIFF) FINAL JUDGMENT
)
) SENTENCE OF IMPRISONMENT
)
) CHARGE:Ct.1:Bribery Ct.2:
) Persistent Felony
RANSOM 2nd Degree
CHARLES,
DEFENDANT

* * * * * * * * * * * * * * * *

The defendant having entered a plea of not guilty, and on the 20th and 21st day of December, 1982, a jury having returned a verdict that the defendant was guilty of the crime of Ct.1 - Bribery and fixed his punishment at eighteen (18) months, subject to enhancement by the jury under Ct.2 of the indictment and the jury having later returned a verdict that the defendant

was guilty of the crime of Ct. 2 - Persistent Felony Offender 2nd Degree and enhanced his sentence of eighteen (18) months under Ct.1 to a period of sixty-nine (69) months,

On this 25th day of February, 1983, the defendant, Ransom Charles, appeared in open Court with his attorney Hon. Bob Ristaneo, and Mrs. Jo-Ann Whitcomb, the Official Stenographic Reporter of this Court, was directed to record the testimony and proceedings of this hearing and the Court inquired of the defendant and his counsel whether they had any legal cause to show why judgment should not be pronounced, and afforded the defendant and his counsel an opportunity to make statements in the defendant's behalf and to present any information in mitigation of punishment, and

the Court informed the defendant and his counsel of the factual contents and conclusions contained in the written report of the presentence investigation prepared by the Division of Probation and Parole, and the defendant having agreed with the contents of said report, and the Court having given due consideration to the report prepared by the Division of Probation and Parole, and the defendant having been given time within which to controvert the factual contents contained in said report, and the Court having given due consideration to the nature and circumstances of the crime, and to the history, character and condition of the defendant, the Court is of the opinion that imprisonment is necessary for the protection of the public because of the defendant's

position of trust at the time of the crime and due to the deliberate nature of the defendant's crime.

No sufficient cause having been shown why judgment should not be pronounced, sentence was imposed by the Court upon the defendant, and it is therefore ORDERED AND ADJUDGED BY THE COURT that the defendant is guilty of the crime of Ct.1 - Bribery, Ct. 2 - Persistent Felony Offender 2nd Degree and his sentence of eighteen (18) months under Ct. 1 of the indictment is hereby ENHANCED under Ct.2 and fixed at a maximum term of sixty-nine (69) months in the State Penitentiary at hard labor; and

IT IS FURTHER ORDERED that the Sheriff of Fayette County shall deliver the defendant to the custody of the

Department of Corrections hereunder at such locations within this state as the Department shall designate.

IT IS FURTHER ORDERED that the defendant is hereby credited with time spent in custody prior to the commencement of sentence, namely, 7 days, towards service of the maximum term of imprisonment.

After imposing sentence, the Court informed the defendant that he has a right to appeal to the Court of Appeals of Kentucky with the assistance of counsel, that if he were financially unable to afford an appeal, a record would be prepared for him at public expense and counsel would be appointed to represent him, that an appeal must be taken within ten days of the date of this judgment and that the Clerk of the

Court would prepare and file a notice of appeal on his behalf within that time if he so requests. Pending appeal the defendant is to remain on his recognizance and given until March 4, 1983, to post an appeal bond of $10,000.00 (full cash or property).

IT IS FURTHER ORDERED BY THE COURT that the sentence of sixty-nine (69) months imposed shall run consecutively with any other sentence the defendant must serve.

IT IS FURTHER ORDERED that the defendant shall pay Circuit Court a crime victim's compensation fee of $10.00.

S/S Charles M. Tackett

JUDGE,
FAYETTE CIRCUIT COURT

NOTICE

The foregoing Judgment was entered on the 2nd day of March, 1983.

Robert M. True, C.F.C.C.
BY:_____DC

The foregoing Judgment and notice of entry was served upon the defendant by mailing a true copy to the Hon. Robert Ristaneo, attorney of record, postage pre-paid, this 2nd day of March, 1983.

BY:_____DC

BEST AVAI

FILED

JAN 10 1985

JOHN C. SCOTT
CLERK
COURT OF APPEALS

APPENDIX E

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
FILE NO. 83-CA-864 MR

RANSOM CHARLES APPELLANT

vs.

COMMONWEALTH OF KENTUCKY APPELLEE

NOTICE OF APPEAL

* * * * * *

Notice is hereby given that the Appellant, Ransom Charles, hereby appeals to the Supreme Court of the United States, October Term, 1985, the opinion of the Kentucky Court of Appeals which was entered September 9, 1983. The Kentucky Supreme Court denied discretionary review on October 17, 1984.

The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C.A. 1257(2).

FILED

JAN 10 1985

JOHN C. SCOTT
CLERK

ABLE COPY

The Appellant is Ransom Charles. Counsel for Appellant is John Y. Brown, Sr. The Appellee is the Commonwealth of Kentucky. Counsel for Appellee is David K. Martin, Assistant Attorney General, Capitol Building, Frankfort, Kentucky 40601.

THIS THE 10th DAY OF JANUARY, 1985.

Respectfully submitted,

By: _____

S/S JOHN Y. BROWN, SR.
c/o 700 Security Trust Bldg.
Lexington, KY 40507-1292
(606) 255-6676

ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing Notice was served by mailing same to: Hon. David K. Martin, Assistant Attorney General, Capitol Building, Frankfort, KY 40601; Clerk of the Kentucky Supreme Court, New Capitol Building, Frankfort, Kentucky 40601; Clerk of the Kentucky Court of Appeals, 403 Wapping Street, Frankfort, KY 40601; Hon. Charles M. Tackett, Judge, Fayette Circuit Court, Courthouse, Lexington, KY 40507; and to the Clerk of the Fayette Circuit Court, Courthouse, Lexington, KY 40507, on this the 10th day of January, 1985.

S/S JOHN Y. BROWN, SR.

APPENDIX F

532.080. Persistent felony offender sentencing. - (1) When a defendant is found to be a persistent felony offender, the jury, in lieu of the sentence of imprisonment assessed under KRS 532.060 for the crime of which such person presently stands convicted, shall fix a sentence of imprisonment as authorized by subsection (6) of this section. When a defendant is charged with being a persistent felony offender, the determination of whether or not he is such an offender and the punishment to be imposed pursuant to subsection (6) of this section shall be determined in a separate proceeding from that proceeding which resulted in his last conviction. Such proceeding shall be conducted before the court sitting with the jury that found the defendant guilt of his most recent offense unless the court for good cause discharges that jury and impanels a new jury for that purpose.

(2) A persistent felony offender in the second degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted one (1) previous felony. As used in this provision, a previous felony conviction is a conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

(a) That a sentence to a term of imprisonment on one (1) year or more or a sentence to death was imposed therefore; and

(b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and

(c) That the offender:

1. Completed service of the sentence imposed on the previous felony conviction within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

2. Was on probation, parole, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or

3. Was discharged from probation, parole, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or

5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of the felony for which he now stands convicted.

(3) A persistent felony offender in the first degree is a person who is more than twenty-one (21) years of age and who stands convicted of a felony after having been convicted of two (2) or more felonies. As used in this provision, a previous felony conviction is a

conviction of a felony in this state or conviction of a crime in any other jurisdiction provided:

(a) That a sentence to a term of imprisonment of one (1) year or more or a sentence to death was imposed therefore; and

(b) That the offender was over the age of eighteen (18) years at the time the offense was committed; and

(c) That the offender:

1. Completed service of the sentence imposed on any of the previous felony convictions within five (5) years prior to the date of the commission of the felony for which he now stands convicted; or

2. Was on probation, parole, conditional discharge, conditional release, furlough, appeal bond, or any other form of legal release from any of the previous felony convictions at the time of commission of the felony for which he now stands convicted; or

3. Was discharged from probation, parole, conditional discharge, conditional release, or any other form of legal release on any of the previous felony convictions within five (5) years prior to the date of commission of the felony for which he now stands convicted; or

4. Was in custody from the previous felony conviction at the time of commission of the felony for which he now stands convicted; or

5. Had escaped from custody while serving any of the previous felony convictions at the time of commission of

the felony for which he now stands convicted.

(4) For the purpose of determining whether a person has two (2) or more previous felony convictions, two (2) or more convictions of crime for which that person served concurrent or uninterrupted consecutive terms of imprisonment shall be deemed to be only one conviction, unless one (1) of the convictions was for an offense committed while that person was imprisoned.

(5) A person who is found to be a persistent felony offender in the second degree shall be sentenced to an indeterminate term of imprisonment pursuant to the sentencing provisions of KRS 532.060(2) for the next highest degree than the offense for which convicted. A person who is found to be a persistent felony offender in the second degree shall not be eligible for probation, shock probation or conditional discharge.

(6) A person who is found to be a persistent felony offender in the first degree shall be sentenced to imprisonment as follows:

(a) If the offense for which he presently stands convicted is a Class A or Class B felony, a persistent felony offender in the first degree shall be sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than twenty (20) years nor more than life imprisonment; or

(b) If the offense for which he presently stands convicted is a Class C or Class D felony, a persistent felony offender in the first degree shall be

sentenced to an indeterminate term of imprisonment, the maximum of which shall not be less than ten (10) years nor more than twenty (20) years.

(7) A person who is found to be a persistent felony offender in the first degree shall not be eligible for probation, shock probation, or conditional discharge, nor for parole until having served a minimum term of incarceration of not less than ten (10) years. (Enact. Acts 1974, ch. 406, §280; 1976, ch. 180, §1; 1976 (Ex. Sess.), ch. 14, §474, effective January 2, 1978; 1978, ch. 78, §6, effective June 17, 1978; 1982, ch. 241, §1, effective July 15, 1982.)